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October Term, 1957

No. 285

GENEVA CAROLYN ANTHONY WRIGHT
PETITIONER

versus

UNITED STATES OF AMERICA
RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. (AND BRIEF IN SUPPORT)

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OCTOBER TERM, 1957

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UNITED STATES OF AMERICA

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT (AND BRIEF IN SUPPORT)

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled cause on April 22nd, 1957 and rehearing denied on June 17th, 1957.

OPINION BELOW

The opinion of the Court of Appeals is reported in the June 17, 1957 issue of Federal Reporter (Second Series) Advance Sheets at page 569, and will be finally reported in 243 F 2d 569.

The opinion affirms a judgment of the District Court for the Middle District of Georgia in connection with which no opinion was rendered.

JURISDICTION

The judgment of the Court of Appeals having been entered on April 22nd, 1957, and that Court having denied petition for rehearing on June 17, 1957 (without an opinion) the jurisdiction of this Court is invoked under 28 U.S.C.A. 1254 (1).

QUESTIONS PRESENTED

1. Whether a woman can be adjudged guilty of violating the Mann Act (18 U.S.C.A. 2421) by merely allowing or consenting for another woman or women, to ride in her car from one state to another, where both women independently of each other intend to engage in prostitution; and where the owner of the car neither entices, coerces or compels the other woman to engage in prostitution and is neither promised or receives any benefit from the other women's activities; and

2. Whether the owner of the car, a woman could be

guilty of conspiracy with her husband to violate the provisions of 18 U. S. C. A. 2421, under the above circumstances, especially where no evidence was introduced on the trial to show that the husband even knew of wife's activities, and was acquitted by the jury of actually violating any provisions of the Mann Act (18 U. S. C. A. 2421).

3. Whether a person can be convicted of a crime on extra judicial confession of acts set out in paragraph one, when there was no corroborating proof aliunde of the corpus delicti.

The failure of the Court of Appeals to comprehend the real question in this case constitutes error, and is in direct conflict with the rulings of the various Circuit Courts, and the United States Supreme Court, in that the effect of the ruling

(a) Completely ignores the true meaning of the Mann Act, 18 U. S. C. A. 2421, and the purposes for which it was originally enacted; and

(b) Completely ignores the intent of Congress, when the Mann Act was enacted; and

(c) Violates the right of the individual citizen, to a fair and impartial hearing and a proper judicial construction of the statutes involved.

(d) Completely ignores one of the fundamental rules of evidence, that one cannot be convicted on an alleged confession when the same is not corroborated by proof aliunde of the corpus delicti.

STATEMENT OF CASE

A. PLEADINGS.

The defendant was jointly indicted with her husband Charles Cantrell Wright, by the Grand Jury at Macon, Georgia, on the 16th day of February, 1956 (R.2) in a three count indictment, charging in Count One that the defendant and her husband, on or about the 29th day of July 1955, did knowingly transport in interstate commerce from Birmingham, Alabama, to Thomasville, Georgia, a certain woman named Mickey Jo Pursley, for the purpose of prostitution and debauchery and for other immoral purposes, and with the intent and purpose to induce, entice and compel said woman to become a prostitute and to give herself up to debauchery, and to engage in other immoral practices, in violation of 18 U.S.C. 2421; and

Count Two charged that defendant and her husband, on or about August 2nd, 1955, did knowingly transport in interstate commerce from Thomasville, Georgia, within the Thomasville Division of the Middle District of Georgia, to Tallahassee, Florida, certain women, towit: Mickey Jo Pursley and Linnie Kincaid, for the purpose of prostitution and debauchery and for other immoral purposes and with the intent and purpose to induce, entice and compel said women to become prostitutes and to give themselves up to debauchery and to engage in other immoral practices, in violation of 18 U. S. C. A. 2421 (R.2); and

Count Three charged that the defendant and her husband on or about June 4th, 1955, and continuously thereafter until date of indictment, did unlawfully, wilfully, know-

ingly and feloniously combine, conspire, confederate and agree together and with each other, to commit an offense, to-wit: to knowingly transport a woman in interstate commerce for the purpose of prostitution and debauchery and for other immoral purposes, in violation of 18 U.S.C.A. 371, in connection with 18 U.S.C.A. 2421. There were then listed fourteen overt acts alleged to have been committed in futherance of said conspiracy. (R.3,6)

The defendant entered a plea of not guilty to the indictment on the 21st day of May, 1956. (R. 6)

Trial of the defendant jointly with her husband, Charles Cantrell Wright, began on the 21st day of May, 1956, and concluded on the 22nd day of May, 1956.

At the conclusion of evidence submitted by the Goverment, the defendant moved for a directed verdict of acquittal upon the primary grounds that the Government had failed to prove that the defendant had conspired with her husband and upon further grounds that the Government had failed to prove that the defendant had knowingly transported Mickey Jo Pursley from Birmingham, Alabama, to Thomasille, Georgia, and Mickey Jo Pursley and Linnie Kincaid from Thomasville, Georgia to Tallahassee, Florida, for the purpose of prostitution and with intent and purpose of inducing, enticing and compelling said women to become prostitutes and engage in other immoral practices. The Court denied the motion and the defendant rested her case without submitting any testimony (R. 76, 78)

The jury acquitted defendant's husband, Charles

Cantrell Wright, on Counts One and Two. The jury found the defendant guilty on all three counts of the indictment (R.7) and the Court on May 23rd, 1956, sentenced the defendant to serve a term of two and one half years in a penal institution of the United States (R.102, 103)

On May 23rd, 1956 the defendant filed a motion to set aside the verdict of the jury and to enter judgment of acquittal, or in the alternative, to grant a new trial (R. 103, 106). and which motion was denied on the 17th day of August, 1956 (R. 106, 107)

B. THE FACTS.

JAMES B. HAFLEY, testified for the Government, that he was a F.B.I. agent. That the defendant was arrested in Tallahassee on August 3rd, 1956. That she and her husband were questioned by him and agent Bill Bolyard. That the defendant told him that she and her husband had been living on a rural route out of Birmingham, Alabama. That Mickey Jo Pursley had been living with them in Birmingham; that Mickey Jo had a boy friend whom she wanted to meet in Thomasville. That they left Birmingham on or about July 26th, 1955, and proceeded to Thomasville, she, Mickey Jo and her husband. That her husband was registered at the Rosemary Inn in Thomasville and she and the Pursley woman registered at the Gilbert Hotel in the same City.

The defendant admitted she filled dates with men at the Gilbert Hotel in Thomasville. That on August 2nd, 1955, defendant said that she made a trip to Tallahassee in her 1953 Buick and was accompanied by Mickey Jo Pursley.

The defendant then stated that she, Mickey Jo Pursley and Linnie Kincaid checked out of the Gilbert Hotel and went by the Rosemary Inn and picked up her husband.

That she admitted filling two or three dates that first night she was in Tallahassee. That she came to Thomasville in her 1953 red and black Buick and travelled to Tallahassee in the same car.

That the Government Exhibit No. 1 is the statement in writing given to him by the defendant and signed by her and contains substantially the testimony that witness had testified about. (R. 7 to 18, 25 to 27 and 29 to 30)

ON CROSS EXAMINATION:

That the statement of the defendant was taken while she was confined in Leon County Jail in Tallahassee. She did not see or talk with anyone prior to signing the statement. He tried to get a statement from her husband but failed.

That he only knew what defendant had told him. That he never interviewed the taxi driver or bell hops of any of the hotels and the only contact with defendant was during his questioning of her in the Leon County Jail.

That defendant actually told him that she had not ced or enticed Mickey Jo Pursley to come with her. That Mickey Jo was the one making the arrangements to go from Birmingham to Thomasville. That defendant said that she and Linnie Kincaid and Mickey Jo Pursley just went to Tallahassee together and neither of them was influencing the other. That

all three women were going to Tallahassee of their own accord for their own pleasure and were neither forced or enticed by anyone. That according to defendant's statement, she had nothing whatsoever to do with the trip to Tallahassee except to go.

That he knew defendant's husband had been in the Navy but never made any check to determine whether an allotment was made to the defendant. That he did not go to Birmingham.

That he had no personal knowledge of anything about the defendant except what she told him. She did say that she had told her husband that she was staying with some friends in Thomasville and there wasn't room for him to stay there and that was why he was at one hotel and she was at another.

That he had no evidence at all about the activities of the husband of defendant. That she never did, at any time, either verbally or in writing tell him that she was guilty of violating the Federal statutes of forcing or enticing Mickey Jo Pursley to come from Birmingham to Thomasville, or from Thomasville to Tallahassee, or of Linnie Kincaid from Thomasville to Tallahassee. That Mickey Jo Pursley was the one who suggested the trip from Birmingham to Thomasille because she had a boy friend there.

That the defendant never did at any time admit to him or anyone in his presence that she had formed a conspiracy with her husband to violate the law, as charged in the indictment.

That his primary job as a F.B.I. agent was to investigate the facts and not to determine whether there has been a violation of the law. (R. 18 to 25 and 27 to 29)

MRS. LOIS COOPER, testified for the Government on direct examination:

That in 1955 she was manager of the Rosemary Inn in Thomasville. Had not been with the Inn since September, 1955. Identified defendant's husband as Charles C. Wright, who registered at the hotel sometimes in August, of 1955. Came in on Friday night between 11 and 1 and checked out on Tuesday afternoon between the hours of 2 and 3.

That he was visited by his wife, the defendant. She came to see him, just to call for him and to take him places. She came first on Saturday and then again on Sunday afternoon. She left some money in an envelope which she gave him. She came by and picked up him on Tuesday when he checked out. The he and defendant left in the same automobile. Defendant's husband paid his own bill when he checked out. (R. 31 to 34, 35)

ON CROSS EXAMINATION:

All I know is that Wright checked in the hotel, the defendant visited him twice. He checked out on Tuesday after paying his bill. (R. 34, 35)

WILLIAM L. BOLYARD testified for the Government, on direct examination:

That he was a special agent with the F.B.I., and

had been for five years and had lived in Thomasville for over two years.

That on the morning of August 2nd, 1955, he saw the defendant, Linnie Kincaid and Mickey Jo Pursley and Charles C. Wright come from the Gilbert Hotel, get into a 1953 red and black Buick, drive around the square in Thomasville and eventually drive towards Tallahassee. On the same afternoon he called special agent James Hafley in Tallahassee, Florida, and advised him that these individuals were headed towards Tallahassee and asked him to make appropriate investigation down there as to where they were staying and what activity they were engaged in. Was advised on following date by Mr Hafley that these individuals had been arrested and were in custody at Leon County Sheriff's office. On August 4th, 1955, he and Mr. Hafley interviewed and took a statement from the defendant at the jail.

Government's Exhibit No. 1 shown him was identified as a signed statement obtained from defendant in Leon County Sheriff's office in Tallahassee on August 4th, 1955. That the last paragraph and her signature were in her handwriting.

The defendant was advised of her constitutional rights before she signed the statement. That she made no request to call or see anybody or that she wanted an attorney. The only request she made was after she had been interviewed for about forty five minutes, she wanted to rest as she was feeling ill and interview was then terminated and completed after lunch.

That he talked with the defendant's husband, who

stated that prior to July 29th, he had been living with his wife at Birmingham, Alabama. That on July 29th, defendant, him and Mickey Jo Pursley got into defendant's 1953 Buick and came to Thomasville. That a room was obtained at Rosemary Inn and he knew defendant and Mickey Jo Pursley were staying at Gilbert Hotel.

That he had no knowledge of what Mickey Jo Pursley and defendant's activities were during the time they were at the Gilbert Hotel.

The defendant, Mickey Jo Pursley and Linnie Kincaid came to his hotel on Tuesday and told him they wanted to check out and go to Tallahassee. That they went to Wakula Springs and he and the defendant had an argument and then they left and came to Tallahassee.

That they came first to Duval Hotel and there they separated and Mickey Jo Pursley separated from them. They did not get a room there and went to a second hotel, and he registered himself, defendant and Linnie Kincaid.

That in Tallahassee as well as in Thomasville, he had no knowledge that his wife was practicing prostitution, that when they registered into the last hotel in Tallahassee, he and the defendant immediately went to bed and spent the remaining time until the next day, when they were arrested in bed; that the defendant didn't leave the room that night.

That Wright further stated that Linnie Kincaid dressed shortly after they got to the hotel and left and he didn't see her again until he saw her at the police station in

Tallahassee under arrest. He stated that he didn't know that his wife and Mickey Jo Pursley were together in Thomasville. (R. 36 to 44.)

ON CROSS EXAMINATION:

That Wright refused to sign a written statement and he has been in jail since his arrest. That he made no investigation to determine whether Wright had made an allotment to the defendant. All that Wright said was that he had no knowledge of the defendant's activities. That he made no admissions or confessions to the charges placed against him. (R. 44 to 45.)

ON RE-DIRECT EXAMINATION:

That a bond was set for Wright by the Commissioner and he could have been released by posting required bond.

That defendant stated that when they checked in the Cherokee Hotel, she, Linnie Kincaid and her husband checked into one room. Defendant further stated that she was in Tallahassee on two separate occasions, the first being early in the morning of August 2nd, 1955, when she and Linnie Kincaid and Mickey Jo Pursley went to Florida in her car. At that time they made contact with a negro taxi driver to practice prostitution in Tallahassee. That she talked with bell boys at Duval Hotel about her desire to practice.

That they came back to Thomasville, checked out of their hotel and proceeded back to Tallahassee and after separating from Mickey Jo Pursley, checked in at Cherokee Hotel. The defendant stated further that her activities; so far as prostitu-

tion was concerned, in Tallahassee was limited to one night, August 2nd, 1955, when she filled two or three dates at the Cherokee Hotel. They were arrested the following day. (R.46 to 53.)

LINNIE KINCAID, testified for the Government on direct examination:

That she was 16 years of age at the time. That she knew defendant and her husband. She first met them in Thomasville. She first met defendant at Gilbert Hotel. That she was practicing prostitution there, where she had been staying for a couple of weeks. That she was either 15 or 16 then, she had forgotten. That defendant and Mickey Jo Pursley were also practicing prostitution at the same hotel.

One night she went out to a motel to see some men. It was around June 24th, and the guy ran them off. She decided that they should go to Tallahassee and check there, that is defendant, and her and Mickey Jo really decided. (R.55) They went to Duval Hotel and she asked the bell boy about the prostitution and all and he said they could make good money and so they told him they would go back and get their things and be back that afternoon and so they went back to Thomasville to the Scott Hotel to meet some men but nothing happened because she and Mickey Jo got drunk and acted funny. That defendant told them to leave but they didn't want to go and they started a fuss. Then they left and went to the tobacco barn and then ate at Plaza Cafe, and she and Mickey were drunk at the time, and left to go to Tallahassee.

That they travelled in defendant's car and she drove.

That on the first trip to Tallahassee, defendant did most of the talking to the beli boy, about returning to Tallahassee.

That she was not giving defendant any money so it didn't matter what she said about her getting drunk and her other activities. On the second trip to Tallahassee they went in defendant's car and she, Mickey Jo, the defendant and her husband were in the car.

That she filled one date with a Senator Matthews when she went back to Tallahassee. That neither she nor Mickey Jo were working for defendant and neither she nor Mickey Jo ever gave defendant any money; in fact, defendant lent them money. (R. 53 to 58).

ON CROSS-EXAMINATION:

That she had been a prostitute for about a year. She had been in Thomasville about three weeks before she met defendant. That she came to Thomasville from Daytona Beach to get a job and started practicing prostitution because she couldn't get one. She came to Thomasville with a man friend.

The defendant had nothing to do with her becoming a prostitute. She did not know the defendant before she met her in Thomasville. That when she met defendant and Mickey Jo, they just practiced their trade together. Defendant was not getting her dates and was not receiving any money from her.

That she went to Tallahassee of her own free will, voluntarily and not as an employee of defendant. It just happened that defendant knew about places where one could

hustle and she didn't. She never talked with defendant's husband about it. She filled one date and it was not in their room. It was with Senator Matthews of Florida. That she did not charge him because he let her use his car. Came to Thomasville, and then back to Tallahassee. Neither defendant nor Mickey Jo were with her. The fact she is a prostitute was her own idea and defendant had nothing at all to do with it. She came from California with a United States Marshal to testify in this case. She was still practicing prostitution. That she had been married several times, but had never been divorced. Neither of the dedendants had anything to do with her entering into prostitution. Neither ever got any money out of her. That she, Mickey Jo Pursley and the defendant just got together and went to Tallahassee. (R. 58 to 66).

ON REDIRECT EXAMINATION:

That on the trips, she, Mickey Jo and defendant bought gas. It was defendant's and Mickey Jo's idea of going to Tallahassee. She met the Senator through a bell boy. (R. 66. 67.)

F. S. McCONNELL, testified for the Government on direct examination:

That he had been manager of Gilbert Hotel in Thomasville for two years. Could not identify either defendant or her husband. That records show that Carolyn Anthony paid her bill on August 2nd, 1955. Also, that Eva Williams was registered at hotel and checked out the same day, August 2nd, 1955. Could not recall ever having a conversation with the defendant or her husband. (R. 67 to 73.)

NAT WARD, JR. testified for the Government:

That he was auditor and assistant manager of Cherokee Hotel in Tallahassee. Identified registration card in name of C. C. Wright and family, Birmingham, Alabama, for three persons on August 2nd, 1955, at 9:07 P.M. (R.73, 74.)

SPECIFICATION OF ERROR URGED

The Court of Appeals erred:

1. In construing the evidence against petitioner as showing a violation of 18 U.S.C. 2421, and in determining that the act applied to petitioner who, the evidence revealed, was not the employer or received any benefit from the activities of the alleged victims.

2. In construing the Mann Act as found in 18 U.S.C. 2421, as applying to the petitioner when there was no evidence that petitioner transported anyone across a state line for compulsory prostitution.

3. In determining that one could be guilty of violating the Mann Act by merely allowing or consenting for a woman to ride in the car with her across a state line even though both parties are prostitutes.

4. In determining that petitioner was guilty under Count One of the indictment of transporting Mickey Jo Pursley from Birmingham, Alabama, to Thomasville, Georgia, in

violation of 18 U.S.C. 2421. In this connection, the Court of Appeal's ruling had the effect of determining that a conviction could be had on extra judicial confession of petitioner, when the same was not corroborated by proof aliunde of the corpus delicti.

5. The court overlooked the fact that there was no evidence in the record, outside of the alleged admission of the petitioner, that the trip was actually made by her with Mickey Jo Pursley, from Birmingham, Alabama, to Thomasville, Georgia. Thus the District Court failed to give proper consideration to the decisions of the District Court as well as those of the Supreme Court of the United States.

6. In determining that petitioner was guilty of violating 18 U.S.C. 2421, under Count Two of said indictment, when there was no evidence introduced on the trial of said case to show that she enticed, coerced, or compelled either Mickey Jo Pursley or Linnie Kincaid to go to Tallahassee, Florida, for the purpose of practicing prostitution.

7. In determining that the petitioner was guilty under Count Three of the indictment of conspiracy with her husband to violate the Mann Act, when the husband was actually acquitted of committing the very acts they were accused of conspiring to violate, and when there was absolutely no evidence in the record that petitioner ever discussed the trips or its purposes with her husband at any time, and thus in failing to recognize the fundamental doctrine that one can not conspire with himself or herself to violate the law.

8. In failing to give proper consideration to the re-

cord which showed that the husband of petitioner (a) never knew of her activities, (b) never made any statement to anyone that he had any knowledge of her activities, and (c) never made any plans for any interstate trip.

9. In failing to take into consideration that the indictment did not charge petitioner with conspiring with either Mickey Jo Pursley or Linnie Kincaid, but charged her with conspiring with her husband, C. C. Wright, to violate the law, when there was no evidence either direct or circumstantial to support the same.

10. In failing to give proper consideration to the decisions of the Court of Appeals and the Supreme Court of the United States, which hold that Federal Judges are not authorized to imply, presume of construct a conspiracy except as one may be found from the evidence.

11. In failing to give proper consideration to the law of circumstantial evidence as applied to the facts of this case, in as much as the evidence adduced on the trial of said case, did not eliminate all doubt of petitioner's guilt and did not exclude every other reasonable hypothesis save that of guilt of accused.

REASONS FOR GRANTING THE WRIT

The effect of the Circuit Court ruling is to deny the petitioner a fair and impartial interpretation of the Mann Act. The intent of Congress in passing this law in the first instance

"to prevent panderers and procurers from compelling thousands of women and girls against their desire, to enter and continue in a life of prostitution" was completely ignored.

The Circuit Court has said in effect, that if two or more women get together for a holiday and mutually agree that they will travel to another state to meet their boy friends, that the one who owns the automobile in which they travel shall be guilty of violating the Mann Act, 18 U.S.C.A. 2421.

Our Circuit Court has seemingly held that because the petitioner was an admitted prostitute, she was guilty. This Court has held on many different occasions that, whether one is a Communist, a negro or a person of shady reputation, he is entitled to the protection of our constitution and a fair interpretation of the law and facts of each case. Individual liberties have been considered far more important than mass hysteria.

This Court should grant this writ to review the petitioner's conviction. The opinion of the Circuit Court fails to give any consideration to the legal points raised and the petitioner is entitled to have her case properly decided.

ARGUMENT ON REASONS FOR GRANTING THE WRIT.

I Under a proper interpretation of the Mann Act, 18 U.S.C.A. 2421, the petitioner could not be lawfully convicted under either count of the indictment.

In the case of BEACH VS. UNITED STATES, 144 F. 2nd 533, it was said:

> "The Committee reports indicate that Congress intended the Mann Act to cover only transportation for compulsory prostitution."

See 45 Cong Record, 805, 821, 1035, 1037.

At pages 535-6, it was said:

> "It is not only proper but mandatory to apply the rule announced in Holy Trinity Church vs United States, 143 U.S. 457, 36 L. Ed 226, by the Supreme Court. " 'It is the duty of the Courts, under these circumstances, to say that, however broad the language of the statute may be, the act, although within the letter, is not within the intention of the legislature, and therefore cannot be within the Statute.' "
>
> "Weight should be given to the canon of statutory construction not long ago referred to by Mr. Justice Stone in United States vs. Katz, 271 U.S. 354, 70 L. Ed. 986, as follows:
>
> " 'All laws are to be given a sensible construction; and a literal application of a statute, which would lead to absurd consequences, should be avoided where a reasonable application can be given to it consistent with the legisla-

tive purposes.' "

In the case of MORTENSEN VS. UNITED STATES, 322 U.S. 369, 88 L. Ed. 1331, this Court intimated that the construction of the statute as set forth in the Beach case, supra would now probably be adopted by them.

In discussing this case in reference to violation of Mann Act, Mr Justice Murphy said:

> "Congress was attempting to prevent panderers and procurers from compelling thousands of women and girls against their desire, to enter and continue in a life of prostitution."
> See House Rep. No. 47 p. 10 (61st Cong. 2nd Session)
> Same report in S. Rep. 886 p. 10.
> 45 Cong. Rec. 805 et. seq.

In the case at bar, there was no evidence that the petitioner benefited in any respect or received any monetary gain from the activities of either Mickey Jo Pursley or Linnie Kincaid. The evidence was uncontradicted that the petitioner did not induce either of said parties to become prostitutes and did not compel either to commit any acts violative of law. The gist of the case against her was that petitioner's automobile was used by the girls in their travel. We most earnestly submit therefore, that the petitioner could not be convicted under the evidence and a proper application of the statute and decisions of our Appellate Courts.

If petitioner could not be convicted under Counts One and Two, then she certainly could not be convicted under the conspiracy count. It seems fundamental that she could not

be guilty of conspiring to do something which was not a violation of the law.

We further think that the Circuit Court overlooked or failed to consider the case off McTYRE VS. UNITED STATES (5th Circuit) 213 F. 2d 65, where that court reversed the defendant's conviction of violating the Mann Act and very aptly said:

> "It is true that there is not one scintilla of evidence to be found in the record tending to show that the defendant transported the victim with intent to induce her to engage in prostitution."

II. The Circuit Court failed to give proper consideration of the fundamental rules of criminal evidence and decisions of our courts that "a conviction can not be had on extra judicial confession of one when the same was not corroborated by proof aliunde of the corpus delicti."

The above stated principal of law and evidence was enunciated by the Circuit Court in the case of MASSEE VS. UNITED STATES 210 F. 2d. 418.

A review of the evidence will reveal not one scintilla of evidence outside of the admission of petitioner that she and Mickey Jo Pursley came from Birmingham to Thomasville, Georgia. Even the registration cards from the hotels at Thomasville did not reveal such fact. It is thus apparent there was no corroborating evidence of any kind and therefore the conviction of the petitioner under Count One can not be sustained under any theory of law. I would like to remind the court Mickey Jo Pursley was not sworn as a witness.

III There was no competent legal evidence to support a verdict of guilty for conspiracy under 18 U.S.C.A. 371.

We humbly submit that the Circuit Court overlooked the sworn testimony adduced on the trial of this case. While it is true as set forth in the original opinion, of the Circuit Court of Appeals, that a husband can conspire with his wife to violate the Mann Act, there is no evidence in the record to support this conclusion.

In the first place, if the petitioner could not be lawfully convicted under Counts One and Two of the indictment as set out above, then certainly she could not be convicted of conspiring to do said acts. We simply say that petitioner's conduct did not make her guilty under a reasonable interpretation of the statutes of violating the Mann Act, as she did not procure, induce or entice anyone to travel interstate for the purpose of prostitution. It logically follows therefore, she could not be guilty of conspiring to do those same acts.

Furthermore the Circuit Court apparently failed to consider that there was not one scintilla of evidence that a conspiracy existed between petitioner and her husband. As a matter of fact the primary evidence of the Government was the testimony of the two F.B.I. men who merely related their conversation with petitioner. Both stated that she said her husband did not even know she was practicing prostitution and the plans for the trip from Birmingham to Thomasville were made by petitioner and Mickey Jo Pursley. The husband according to the uncontradicted evidence, did not even figure in the plans; and likewise concerning the trip from Thomasville, Georgia to Tallahassee, Florida.

In this connection, we feel that the Circuit Court failed to give sufficient consideration to the following cases:

DODSON VS UNITED STATES, 215 F. 2d 196.

KRULEWITCH VS UNITED STATES, 336 U.S. 440, 93 L. Fd. 790.

This court should bear in mind that petitioner was not indicted for conspiring with either Linnie Kincaid or Mickey Jo Pursley. She was indicted for conspiring with her husband. We say that there is no evidence in this record to show that any such conspiracy existed.

The Court in the case of MACRETH VS. UNITED STATES, (5th Cir., 103 F. 2d 495), said:

> "One could not conspire by himself. To support the charge of conspiracy, the intent to conspire must be shown."

Finally we honestly believe that had the Circuit Court applied the ruling made in the case of KASSEN VS. UNITED STATES (5th Cir.) 87 F. 2d 183, the judgment of the District Court would have been reversed.

CONCLUSION

This petition is filed because we honestly and sincerely feel that the Fifth Circuit Court misconstrued the applicability of the Mann Act (18 U.S.C.A. 2421) and completely disregarded the intent of Congress in passing this legislation.

We feel that a proper construction of said act as applied to the facts of this case will result in petitioner's acquittal. Since there has been no direct decision on the points raised in our petition, we feel that we are entitled to have them passed upon by this Court.

Frank S. Twitty

FRANK S. TWITTY
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PROOF OF SERVICE

I hereby certify that I have made service of 3 copies of the foregoing Petition for Certiorari upon the Solicitor General, Department of Justice, Washington 25, D.C., by depositing same in an envelope so addressed and placing the same in the United States Post Office at Camilla, Georgia, on the 10 day of July, 1957, with sufficient postage to insure delivery.

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I further certify that I have also mailed, in due course of mail, a copy of the foregoing Petition to the Honorable Frank Evans, United States Attorney, Middle District of Georgia, Macon, Georgia, and a copy to the Honorable J. Sewell Elliott, Assistant United States Attorney, Macon, Georgia on this the 10 day of July, 1957, with postage thereon fully prepaid.

Frank S. Twitty

ATTORNEY FOR PETITIONER

APPENDICIES

APPENDIX "A"

IN THE
UNITED STATES COURT APPEALS
FOR THE FIFTH CIRCUIT

NO. 16280

GENEVA CAROLYN ANTHONY WRIGHT
APPELLANT

versus

UNITED STATES OF AMERICA
APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

(April 22nd, 1957)

Before HUTCHESON, Chief Judge, and BORAH and TUTTLE, Circuit Judges.

PER CURIAM: This is an appeal from a conviction of appellant on all three counts of an indictment charging violations of 18 U.S.C.A. section 2421, relating to white slavery and of 18 U.S.C.A. section 371, the conspiracy statute. The only ground of appeal is that the verdict of the jury is without competent legal evidence to support it. At the conclusion of the Government's case appellant moved for a directed verdict of acquittal. Upon the verdict of guilty and sentence of the court, appellant filed motion for new trial, which was overruled.

There can be no doubt that a woman can be found guilty of conspiracy with her husband to violate the white slavery statute. Thompson vs. United States (5 Cir.) 227 F. 2d 671. Moreover, it is not necessary that the "victim" of the transportation be innocent of prior sexual misconduct. Morrow vs. United States (5 Cir.) 20 F. 2d 363. That case meets exactly the challenge made here, and, there being ample evidence that this appellant did conspire with her husband to, and did actually, transport the other prostitutes, one of them from Birmingham, Alabama, to Thomasville, Georgia, and then, together with the second one, from Thomasville to Tallahassee, Florida, for the purpose of engaging in prostitution, the verdict of the jury was amply supported.

The judgment is AFFIRMED.

Note: This case reported in 243 Federal Reporter 2d Series at page 569 to 570.

ORDER DENYING REHEARING

Extract from the Minutes of June 17th, 1957

NO. 16280

GENEVA CAROLYN ANTHONY WRIGHT

v.

versus

UNITED STATES OF AMERICA

It is ordered by the Court that the Petition for rehearing filed in this cause be, and the same is hereby, denied.

APPENDIX "B"

18 U. S. C. A. Section 371. Conspiracy.

If two or more persons conspire, either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000, or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701.

18 U. S. C. A. section 2421. White Slave Act.

Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia, or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purposes, or with the intent and purpose to induce, entice, or compel such woman or girl to became a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or

Whoever knowingly procures or obtains any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate

or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in the District of Columbia, or any Territory or Possession of the United States -

Shall be fined not more than $5,000.00 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 812, amended May 24, 1949, c. 139 sec. 47, 63 Stat 96.

FILED
AUG 8 1957
JOHN T. FEY, Clerk

No. 285

In the Supreme Court of the United States

OCTOBER TERM, 1957

GENEVA CAROLYN ANTHONY WRIGHT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
WARREN OLNEY III,
Assistant Attorney General,
BEATRICE ROSENBERG,
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Department of Justice, Washington 25, D. C.

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435072—57

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 28[redacted]

GENEVA CAROLYN ANTHONY WRIGHT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 28–29) is reported at 243 F. 2d 569.

JURISDICTION

The judgment of the Court of Appeals (Pet. 29) was entered on April 22, 1957. A petition for rehearing was denied on June 17, 1957. The petition for a writ of certiorari was filed on July 17, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether there was sufficient corroborative evidence of the corpus delicti to warrant consideration,

by the jury, of the voluntary, extra-judicial statement of petitioner.

2. Whether monetary gain from conduct proscribed by the Mann Act is essential to conviction under that Act.

3. Whether, under an indictment charging petitioner with knowingly transporting women in interstate commerce for the purpose of prostitution, it must be shown that petitioner *induced* the women to be transported to practice prostitution.

STATEMENT

On February 16, 1956, in the United States District Court for the Middle District of Georgia, petitioner was jointly indicted with her husband in a three-count indictment (R. 2–6) charging, in the first two counts, substantive violations of the White Slave Traffic Act (Mann Act), 18 U. S. C. 2421, and, in the third count, a conspiracy. She was found guilty on all three counts (R. 7), and sentenced generally to a term of two and one-half years in prison (R. 102–103).[1] In a *per curiam* opinion, the Court of Appeals for the Fifth Circuit affirmed the conviction (Pet. 28–29).

The evidence adduced at the trial may be summarized in pertinent part as follows:

1. Petitioner was arrested in Tallahassee, Florida, on August 3, 1955 (R. 8). After being fully advised of her constitutional rights, she gave a signed statement to two agents of the Federal Bureau of Investigation which was received in evidence upon the conclusion

[1] Petitioner's husband and co-defendant was acquitted on Counts I and II, and found guilty of conspiracy under Count III. He is not a party to the instant petition.

of the government's case (R. 75). Petitioner told the agents that she, and one Mickey Jo Pursley, lived near Birmingham, Alabama, and practiced prostitution there. Petitioner supported her husband, who was AWOL from the Navy (R. 10, 40), in this manner and by cashing war bonds (R. 9–11). On July 26, 1955, petitioner drove her husband and Pursley from Birmingham, Alabama, to Thomasville, Georgia, in a red and black Buick automobile registered in petitioner's name (R. 10–15). Petitioner and Pursley were to meet "boy friends" in Thomasville, and petitioner then intended to return her husband to the Navy in Florida (R. 10). In Thomasville, Mr. Wright registered at the Rosemary Inn, and petitioner and Pursley stayed at the Gilbert Hotel (R. 10). Petitioner practiced prostitution there, and brought her husband money at the Rosemary Inn on various occasions (R. 14–15, 33, 40).

Petitioner and Pursley went from Thomasville, Georgia, to Tallahassee, Florida, to inquire about the possibilities of prostitution (R. 13–15). After they returned to Thomasville, petitioner, her husband, Pursley, and one Linnie Kincaid, another prostitute whom they had met in Thomasville, all proceeded to Tallahassee in petitioner's car, which she drove (R. 13–16). In Tallahassee, petitioner, her husband, and Kincaid registered in one hotel room. Petitioner told a bell-hop, in the presence of her husband, that she and Kincaid were there to practice prostitution, and made arrangements with the bell-hop to get dates for them. She practiced prostitution there (R. 14–15, 51–52).

2. In addition to the testimony as to petitioner's statement, Linnie Kincaid testified that she met petitioner and Pursley in Thomasville where all three of them were practicing prostitution (R. 53–54); that she accompanied petitioner and Pursley on both trips to Tallahassee in petitioner's car which petitioner drove (R. 55–56), but that all three were operating independently and that both she and Pursley each contributed $2.00 worth of gas for the trip (R. 66–67). She went with petitioner to Tallahassee the first time because petitioner "knew about the places you could hustle and where you couldn't, and I didn't" (R. 62). Petitioner did all the talking when inquiring about prospective prostitution activity (R. 56). Kincaid testified that they made the second trip to Tallahassee to practice prostitution (R. 56–57), that petitioner's husband knew about their prostitution activities, and recorded their "dates" and receipts (R. 58): Petitioner's husband denied to the F. B. I. that he knew anything about his wife's prostitution activities (R. 41).

The manager of the Gilbert Hotel in Thomasville could not identify petitioner, but testified that he checked out a "Caroline Anthony" on August 2, 1955 (R. 71–73). Petitioner's statement to the F. B. I. related that she had registered at that hotel as "Carolyn Anthony and party" (R. 71).

The manager of the Rosemary Inn in Thomasville, where petitioner's husband stayed, identified both petitioner and her husband, who registered under his own name. Petitioner, who claimed to be Mr. Wright's sister, came to see him several times in a red

and black automobile, and left money to give to Mr. Wright (R. 31–34).

The clerk at the Cherokee Hotel in Tallahassee testified that according to his hotel records three persons checked in for a room on August 2, 1955, under the name of "C. C. Wright and Family, Birmingham, Alabama" (R. 74).

ARGUMENT

1. Petitioner avers that her conviction cannot be sustained because her extra-judicial statement to the F. B. I. was not corroborated by other independent proof of the corpus delicti (Pet. 22). On the contrary, there was ample independent evidence of all elements of the crime to meet the test laid down by this Court in *Opper* v. *United States*, 348 U. S. 84. Particularly with respect to the second count, dealing with the transportation from Thomasville to Tallahassee (a count which in itself supports the verdict),[2] the testimony of the witness Kincaid alone establishes all elements of the crime—the interstate transportation and the purpose to practice prostitution. In addition, there was the testimony of the hotel managers placing petitioner and her husband in Thomasville and then in Tallahassee (see the Statement, *supra*, pp. 4–5).

2. Petitioner contends that she could not be found guilty of violating the Mann Act because the govern-

[2] In view of the general sentence, petitioner's attack on the sufficiency of the evidence to support the conspiracy count is immaterial. The verdict is, however, amply supported by the evidence that the husband acompanied his wife on the trips made for the purpose of practicing prostitution, recorded the earnings of the girls, and lived on petitioner's earnings as a prostitute.

ment failed to prove that she benefited financially from the activities of Pursley and Kincaid (Pet. 20–21). It is however established that the Mann Act, although "primarily" aimed at the use of interstate commerce for the purposes of commercialized sex (*Mortensen* v. *United States*, 322 U. S. 369, 377), is not restricted to that end. It also covers a transportation devoid of pecuniary motive or gain. *Cleveland* v. *United States*, 329 U. S. 14, 18; *Caminetti* v. *United States*, 242 U. S. 470, 486; *Lindsey* v. *United States*, 227 F. 2d 113, 117 (C. A. 5), certiorari denied, 350 U. S. 1008.

3. Petitioner further contends that since she, Pursley, and Kincaid operated independently, and she did not induce or entice them to be transported to practice prostitution, she was not guilty of an offense under the statute (Pet. 21–22).

The Mann Act specifically includes within its intendment one who "knowingly transports in interstate * * * commerce * * * any woman or girl for the purpose of prostitution * * *". Proof of transportation for the proscribed purposes is alone sufficient to establish the offense. See *Gebardi* v. *United States*, 287 U. S. 112, 118; *Hoke* v. *United States*, 227 U. S. 308, 320; *Christian* v. *United States*, 28 F. 2d 114, 115 (C. A. 8).

While the indictment also included an allegation based on the portion of the statute proscribing, in the disjunctive, the transportation of a woman with intent to *induce* her to become a prostitute, the judge properly charged the jury that transportation for any one of the proscribed purposes would support the conviction (R. 88). See *Mellor* v. *United States*, 160 F. 2d 757,

760–762 (C. A. 8), certiorari denied, 331 U. S. 848, and cases cited therein.

The fact that petitioner may have also intended to return her husband to the Navy in Florida (R. 10) is not persuasive. The immoral purpose need not be the sole purpose of the transportation. It will suffice if one of the efficient and compelling reasons in the accused's mind was such illicit conduct. *O'Neal* v. *United States,* 240 F. 2d 700, 703 (C. A. 10); *Masse* v. *United States,* 210 F. 2d 418, 421 (C. A. 5), certiorari denied, 347 U. S. 962; *Dunn* v. *United States,* 190 F. 2d 496, 497 (C. A. 10).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1957.

U. S. GOVERNMENT PRINTING OFFICE: 1957